

HOUSE BILL 3411
By McMillan

AN ACT to amend Tennessee Code Annotated, Title 4;
Title 5; Title 6; Title 7; Title 8; Title 9; Title 12; Title
16; Title 30; Title 36; Title 39; Title 40; Title 45;
Title 47; Title 48; Title 55; Title 56; Title 57; Title
61; Title 62; Title 67; Title 68; Title 69; Title 70 and
Title 71, relative to taxation.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 6, Part 2, as amended by Chapter 357 of the Public Acts of 2003, as amended by Chapter 959 of the Public Acts of 2004, as amended by Chapter 311 of the Public Acts of 2005, is amended by deleting § 67-6-228 in its entirety and by substituting instead the following language:

Section 67-6-228.

(a) Notwithstanding any provision of this part to the contrary, except as otherwise provided in subsection (c), the retail sale of food and food ingredients for human consumption shall be taxed at the rate of five percent (5%) of the sales price.

(b) Except as otherwise provided in this section, "food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" does not include alcoholic beverages, tobacco, candy, or dietary supplements.

(c) The retail sale of the food and food ingredients sold as prepared food shall be taxed at the rate of tax levied on the sale of tangible personal property at retail by the provisions of § 67-6-202.

(d) For purposes of this section:

(1) "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy shall not include any preparation containing flour and shall require no refrigeration;

(2) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

(A) Contains one or more of the following dietary ingredients:

(i) A vitamin;

(ii) A mineral;

(iii) An herb or other botanical;

(iv) An amino acid;

(v) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(vi) A concentrate, metabolite, constituent, extract, or combination of any ingredient described above; and

(B) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(C) Is required to be labeled as a dietary supplement, identifiable by the "Supplement Facts" box found on the label and as required pursuant to 21 C.F.R. § 101.36;

(3) "Prepared food" means:

(A) Food sold in a heated state or heated by the seller;

(B) Two (2) or more food ingredients mixed or combined by the seller for sale as a single item; or

(C) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.

"Prepared food" in subdivision (d)(3)(B) does not include food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration in Chapter 3, Part 401.11 of its Food Code so as to prevent food borne illnesses;

(4) "Alcoholic Beverages" means beverages that are suitable for human consumption and contain one-half of one percent (0.5%) or more of alcohol by volume; and

(5) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

SECTION 2. This act shall take effect January 1, 2007, the public welfare requiring it.